

DOCKET FILE COPY ORIGINAL

RECEIVED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUL 27 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of: )  
Implementation of Sections 12 and )  
19 of the Cable Television Consumer ) MM Docket No. 92-265  
Protection and Competition Act )  
of 1992 )  
)  
Development of Competition and )  
Diversity in Video Programming )  
Distribution and Carriage )

---

REPLY OF THE  
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA) respectfully submits this reply regarding the oppositions to the petitions for reconsideration of the Commission's First Report and Order in this proceeding, 8 FCC Rcd 3359 (1993). USTA's reply addresses only one issue addressed on reconsideration and in oppositions - the nature of the affiliation connection permitted by Congress between cable operators and programming interests.

A number of the petitions and commenters seek to dilute the Commission's standard and to engage a more permissive test. There are some comments that argue that the test should be comparable to or more lenient than the test used by the Commission in its video dialtone order, Telephone Company-Cable Television Cross Ownership Rules, Sections 63.54 - 63.58, Second Report and Order,

No. of Copies rec'd  
List A B C D E

049

Recommendation to Congress and Second Further NPRM, 7 FCC Rcd 5781 (1992), reconsideration pending.<sup>1</sup>

The Commission should reject attempts to dilute the test for affiliation between cable operators and programming interests for the purposes of this proceeding. The standards set out in section 628 of the 1992 statute are clear, and they are not the same as those chosen by Congress for use with section 613(b) of the Communications Act, which still bans carrier control over any provision of cable programming in its service area, but which has been extended beyond its plain wording by the Commission. Dilutive action here on program access would harm the public interest.

By using the phrase "attributable interest" throughout section 628, Congress rejected the test of "control" that is anticipated in section 613(b), and it affirmatively chose to use a more stringent standard, without room for ad hoc relaxation. If Congress had intended to use the same test that appears in section 613(b), it would have referenced the relevant definition that governs carrier involvement in video programming provision and other parts of Title VI. That definition appears in section 602(2) ("affiliate") and applies throughout Title VI of the Act, well beyond section

of Bell Atlantic and of the Wireless Cable Association International each explain part of the story. When S. 12 was introduced on January 14, 1992, it included the term "attributable interest" without a specific definition. For parliamentary reasons, the bill reported from the House Energy and Commerce Committee on the House side did not contain program access provisions.<sup>2</sup>

The House of Representatives was offered its choice between two amendments, one by Rep. Manton (D-NY) that would have restricted "any programming vendor that controls, is controlled by, or is under common control" with a multichannel video programming distributor (a test comparable to the section 602(2) test), and another by Rep. Tauzin (D-LA), which would have resulted in use of the "attributable interest" test included in S. 12.

In floor debate in the House, Congressmen Tauzin and Eckart (D-OH) each recognized the more limited scope of the Manton amendment.<sup>3</sup> A comparable perception was articulated by Rep. Harris (D-AL).<sup>4</sup> The House overwhelmingly adopted the Tauzin amendment.<sup>5</sup>

---

<sup>2</sup> See H. Rpt. No. 628, 102d Cong., 2d Sess. (1992), at 165 (Additional Views of Rep. Tauzin, et.al.)

<sup>3</sup> Floor statement of the Hon. William Tauzin, 138 Cong. Record H 6534 (July 23, 1992); Floor statement of the Hon. Dennis Eckart, Id. at H 6540.

<sup>4</sup> Id. at H 6541.

<sup>5</sup> See Wireless Cable Association Intl. Opposition at 17-19.

Clearly, the suggestion by Liberty Media for a standard that differs from that chosen by Congress should be rejected as violative of the plain language of the 1992


statute and its legislative history. Bell Atlantic's explanation that the cable operator

multichannel video programming distributors to offer to consumers viable options to an established cable operator.<sup>9</sup>

The Commission should reject the requests for special treatment that permeate the reconsideration petitions and the comments of cable operators and related programming interests. It should read section 628 as Congress wrote and understood it.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

BY 

Martin T. McCue  
Vice President & General Counsel  
U.S. Telephone Association  
900 19th St., NW Suite 800  
Washington, DC 20006-2105  
(202) 835-3114

July 27, 1993

---

<sup>9</sup> The handling of the Primestar Partners case in New York by cable interests, mentioned in the filing of National Rural Telecommunications Cooperative, underscores the continuing incentives of the large vertically-integrated cable interests to seek new hurdles for their competitors, including even fledgling competitors. A number of USTA members and USTA have outlined to the court there how the proposed settlement of that litigation would operate in an anticompetitive rather than a competitive manner. Cable interests would have excluded from the program access provisions under that proposed settlement most carriers and all their affiliated video programming providers.

**CERTIFICATE OF SERVICE**

I, Robyn L.J. Davis, do certify that on July 27, 1993 copies of the Reply of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

  
Robyn L.J. Davis

Ward W. Wueste, Jr., HQE03J43  
Marceil F. Morrell, HQE03J35  
GTE  
P.O. Box 152092  
Irving, TX 75015

James R. Hobson  
Jeffrey O. Moreno  
Donelan, Cleary, Wood & Maser,  
P.C.  
1275 K Street, NW  
Suite 850  
Washington, DC 20005

David M. Silverman  
Cole, Raywid & Braverman  
1919 Pennsylvania Avenue, NW  
Suite 200  
Washington, DC 20006

Robert W. Crandall  
The Brookings Institution  
1775 Massachusetts Avenue, NW

Michael L. Glassman  
Glassman-Oliver Economic  
Consultants, Inc.

Richard E. Wiley  
Lawrence W. Secrest, III  
Philip v. permut

Jane R. Cottrell  
Mark Melnick  
Group W. Satellite Communications  
250 Harbor Drive  
Stamford, CT 06904

Stephen A. Hildebrandt  
Westinghouse Broadcasting Co., Inc.  
1025 Connecticut Avenue, NW  
Washington, DC 20036

ITS  
2100 M Street, NW  
Suite 140  
Washington, DC 20036